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DEPARTMENT OF CONSERVATION  
MAINE LAND USE REGULATION COMMISSION  
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AUGUSTA, MAINE 04333-0022



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# Memorandum

**To:** *Commission Members*  
**From:** *Fred Todd, Manager*  
*Sarah Giffen, Senior Planner*  
*Caroline Eliot, Senior Planner*  
*Tim Beaucage, Senior Planner*  
*Susan Burns, Senior Planner*  
*Planning Division*  
**Date:** *October 1, 2007*

Re: 2008 Comprehensive Land Use Plan revision ~ complete preliminary draft

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Over the course of the last two years, we have presented the first iteration of the individual chapters of the 2008 Comprehensive Land Use Plan (CLUP) revision to you. Since that time, we have revised the draft language to reflect Commissioner's comments and have compiled the individual chapters into the enclosed complete preliminary draft CLUP. Due to the enormous volume of information included in this draft, we have highlighted the most important and significant changes from the 1997 CLUP language later in this memorandum. For context, we think that it is valuable to revisit both, why we are revising the CLUP and where we are in the revision process.

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## **Background: Why we are revising the CLUP**

The Commission's enabling statute requires that the Commission operate under a Comprehensive Land Use Plan. The original CLUP was adopted in 1976 and underwent complete revisions in 1983 and 1997 as well as focused amendments in 1990 and 2001. In order to keep the Plan up to date and current, it is the staff's objective to revise it approximately every 10 years. Consequently, staff hopes to adopt a revised CLUP by 2008.

In revising the CLUP, staff believes that it is also important to frequently reflect back to the purpose and scope of the Land Use Regulation Commission as outlined in the Commission's enabling statute. The ideas expressed in the Commission's enabling statute should be reflected in the Comprehensive Land Use Plan. Under this statute, the *Legislature finds that it is desirable to extend principles of sound planning, zoning, and subdivision control to the unorganized and deorganized townships of the State:*

- *To preserve public health, safety and general welfare;*
- *To prevent inappropriate residential, recreational, commercial and industrial uses detrimental to the proper use or value of these areas;*
- *To prevent the intermixing of incompatible industrial, commercial, residential and recreational activities;*
- *To provide for appropriate residential, recreational, commercial and industrial uses;*
- *To prevent development in these areas of substandard structures or structures located unduly proximate to waters or roads;*
- *To prevent the despoliation, pollution and inappropriate use of the water in these areas; and to preserve ecological and natural values; and*
- *To encourage the well planned, well managed multiple use, and appropriate use by residents and visitors in pursuit of outdoor recreation activities.*

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**Process: Where we are in the 2008 CLUP revision process**

The following table outlines the 2008 CLUP revision process and timeline. We are nearing the end of the first phase, 'preliminary research and drafting', of this project. The intent of the 'preliminary drafting' phase was to gather as much information as possible on the resources and issues facing the jurisdiction, educate both the staff and the Commission, and create a preliminary draft of the 2008 CLUP to serve as a foundation for discussion in the second phase 'public workshop' of this project. We are hopeful that we can begin holding public workshops early in January, but some of that will depend on the scheduling of other major projects currently before the Commission.

PHASE	DETAILS	TIMELINE	COMPLETE
Preliminary Research and Drafting	Panel Discussion and Guest Speakers <i>(Held forums on numerous topics to educate Commission and Staff)</i> Staff Research	2004-2006	✓
	Drafting <i>(Staff drafted revisions based on research and forums. Presented drafts to Commission for comment)</i>	2004-2007	✓
	Complete preliminary CLUP draft <i>(Staff asks Commission to review complete preliminary draft and authorize public workshops)</i>	October 10 <sup>th</sup> , 2007	★ We are here.
Public Workshops	Public Workshops <i>(Staff holds informal public workshops to gather comments on preliminary draft of CLUP)</i> Tentative Locations: <ul style="list-style-type: none"><li>• Augusta</li><li>• Machias</li><li>• Millinocket</li><li>• Caribou</li><li>• Portland</li></ul>	January, 2008	
	Stakeholder Meetings <i>(Staff meets with interested parties to discuss CLUP. Staff solicits meetings with key parties to ensure that all perspectives are heard.)</i>	November 2007- January 2008	
Public Hearing and Formal Adoption		Timing depends on the nature of comments received during public workshop phase.	

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**Summary of Complete Preliminary Draft 2008 CLUP**

Due to the fact that the complete preliminary draft of the CLUP includes a large volume of information we have attempted to summarize the document in two ways. First, we have created a summary of the major findings and recommendations. Second, we have highlighted the significant changes in the 2008 draft language from the 1997 language by chapter.

The summary of major findings and recommendations is as follows:

### **Summary of Major Findings and Recommendations**

The Commission's jurisdiction is a unique area characterized by rich natural resources, working forest, extensive recreational opportunities, and remote landscapes - its principal values. This area faces unprecedented changes in ownership, land values, and other factors that have the potential to dramatically alter the qualities that distinguish it from other areas of the eastern U.S. Many of the factors that have contributed to the protection of the area's unique qualities up to this point, such as landowner intent and market forces, can no longer be relied upon to maintain the area's principal values.

Demand for recreational properties has increased since the Commission's creation and is expected to continue. Analysis of development trends over the past 35 years reveals that existing LURC rules are inadequate to prevent dispersing development. In the face of this inadequacy, recent ownership changes increase the risk of significant changes in the qualities that have characterized this unique part of the state for so long.

The Commission strongly believes that development can be accommodated in the jurisdiction without undermining the principal values, if it is located appropriately. The current regulatory framework does not effectively guide development to appropriate areas and away from inappropriate areas. Actions taken or not taken by the Commission to modify its regulatory framework in the immediate future will determine whether the jurisdiction's principal values will be maintained.

### **Issues and Recommended Revisions**

Major Issue: Residential development is dispersing in a manner that is not compatible with maintenance of the principal values of the Commission's jurisdiction. While 44% of new dwellings over the past 35 years were concentrated in 21 minor civil divisions (MCD), 56% of new dwellings were dispersed across 307 minor civil divisions. Two major weaknesses in the Commission's approach contribute to this dispersion of development:

- **Exemption of considerable residential development from Commission's process for directing development..** At least 72% of new dwellings permitted by the Commission since 1971 have occurred on lots that were not reviewed through the Commission's rezoning and subdivision review processes. They occurred on lots that either existed prior to the creation of the Commission or were created through exemptions to the subdivision review process. Consequently, these lots were not subject to the Commission's policies designed to guide development to appropriate areas.
- **The Commission's approach to rezoning.** The Commission's rezoning process is driven more by landowner preference than by public policy regarding the most suitable locations for development. Existing tools for evaluating rezoning proposals direct development to areas near existing development. However, they do little to evaluate the relative suitability of these areas for future growth and do not consider key factors such as natural resource sensitivity and proximity to public services and infrastructure. Furthermore, these tools do not prevent the leading edge of development from moving progressively deeper into remote, undeveloped areas.

Recommendations: The Commission will pursue changes to its approach designed to concentrate development near economic centers and to maintain interior areas for traditional uses. The options include:

- Developing new approaches to directing most development to areas most suitable for growth.
- Redefining adjacency to consider other factors pertinent to the appropriateness of areas for development.
- Limiting dwellings to small traditional camps without utilities in areas where the jurisdiction's principal values are most at risk.
- Protecting forestland in the interior by measures such as encouraging conservation efforts and undertaking prospective zoning in these areas.

- Encouraging conservation in high growth areas with significant resource values to protect the character and values of these areas.
- Applying prospective zoning to high growth, high value regions and/or areas where principal values are most at risk.
- Developing an approach which prevents the leading edge of development from moving progressively deeper into remote areas.
- Modifying certain subdivision exemptions to limit use for development purposes<sup>1</sup>.

Other Issues: The Commission's regulatory framework is straining to meet the challenges of recent decades. Particularly since the 1990s, the nature and scale of land and resource uses have evolved in ways that could not have been anticipated, and the forces influencing land use have become more complex.

Recommendations: The Commission must adjust its regulatory framework to better respond to ongoing changes. The options include:

- Updating the Commission's regulatory framework to reflect changing and evolving uses, so that uses are regulated based on their true intensity of use and potential impacts.
- Updating the regulatory framework applied to the growing amount of major development coming to the jurisdiction, including large scale recreational development, energy projects, concept plans, and nature-based tourism.
- Developing vegetative clearing and other standards to limit the environmental and visual impacts of hillside and ridge development.
- Refining rules governing the expansion of non-conforming shoreland development to minimize the impact of such expansions.
- Researching options for addressing issues associated with use of private roads to access development with the goal of minimizing future problems regarding public safety, legal access, delivery of public services and other concerns.

The summary of significant changes in draft 2008 CLUP language from 1997 CLUP language by chapter is as follows:

#### Chapter 1 Vision, Goals and Policies for the Jurisdiction:

- Moved vision statement and description of the jurisdiction's principal values (as well as the goals and policies and implementation) to the front of the document
- Simplified the vision statement to one sentence

#### Chapter 2 The Commission:

- Updated to reflect change in: makeup of Commission, regulatory framework, conservation initiatives, relationship with other agencies, and major accomplishments since last plan

#### Chapter 3 The Jurisdiction:

- Updated to reflect data from most recent census of population and housing in the jurisdiction
- Added profiles of seven regions of the jurisdiction

#### Chapter 4 Development:

- Updated figures and data on the amount and location of development occurring in the jurisdiction
- Added information on land ownership in the jurisdiction, emphasizing changes over the last two decades
- Added section describing LURC regulatory approach to clarify existing policies and procedures pertaining to development

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<sup>1</sup> The Commission does not propose any change to the following existing exemptions: transfers for forest management, agricultural management, or conservation; transfers to abutters; transfers by inheritance, court order, or gifts to relatives; and transfers to governmental entities.

- Increased emphasis on dispersed development as major issue facing the jurisdiction, similar to the 1997 Plan's identification of "location of development" as the central issue
- Recommended potential options for changing Commission's approach designed to concentrate development near economic centers and maintain interior areas for traditional uses, including forest management
- Increased emphasis on locating development near economic centers and infrastructure
- Acknowledged that LURC regulatory framework is straining to keep up with the pace of changes in land use in the jurisdiction
  - Increasing number of new uses; evolution of existing uses in intensity and impacts
  - Recognition of the unprecedented number of major projects, e.g. large scale recreational developments (ski areas), grid scale wind power, concept plans
  - Growing hillside development and associated impacts
  - Changing character of development (larger houses build for four season use)
  - Concern over issues associated with use of private roads to access development
- Included clearer articulation of the fact that the Commission must take stronger stance in directing where development is most appropriate and can no longer rely on previous land owner intent to retain land in forestry
- Added policy statement regarding affordable housing

#### Chapter 5 Natural and Cultural Resource Values:

##### Section 5.1 Agricultural Resources:

- No substantive changes
- Updated figures

##### Section 5.2 Air Resources:

- Added climate change discussion
- Increased recognition of significant air resource issues facing the jurisdiction as well as the New England region
- Added statement that the Commission will consider both the beneficial and adverse impacts to Air Resources in its evaluation of residential and nonresidential projects

##### Section 5.3 Coastal Resources:

- Updated data
- Added information on island issues: affordable housing, permanent wharf construction, habitat protection, and common ownership of property
- Expanded discussion of several other island issues: unique planning challenges, adjacency, maritime development zone, dimensional requirements, forest stand management, and public access and recreational use

##### Section 5.4 Cultural, Archaeological and Historical Resources:

- Added brief discussion of current cultural heritage efforts in the state
- Added information on new collaborative efforts between LURC and MHPC using MHPC data

##### Section 5.5. Energy Resources **(In addition to the following brief bulleted summary of energy resources, we have attached specific questions for your consideration):**

- Included new information on energy landscape in Maine (ISO-NE, restructuring, state policy, etc.)
- Updated information on hydro, biomass, wind
- Strengthened commitment to state energy goals
- Identified factors to consider in review of energy projects and envisions further work to develop consistent regulatory processes, review criteria, and performance standards

#### Section 5.6 Forest Resources:

- Increased emphasis on working forest landscape being one of the most distinctive principal values of jurisdiction
- Updated forest inventory information
- Moved the detailed discussion on ownership to the development chapter
- Increased emphasis on importance of forest products industry to economic and environmental health of state
- Added discussion on the increasing competitive global market place for forest products
- Increased emphasis on Commission's commitment to limiting conversion of working forest lands
- Expanded discussion on changing patterns of ownership and pressure to get highest returns on timber land investment
- Expanded discussion on fragmentation of ownership

#### Section 5.7 Geologic Resources:

- Added description on the Unusual Area Protection (P-UA) Subdistrict as applied to geological resources
- Moved most of the discussion of wind energy resources to the Energy Resources Section

#### Section 5.8 Plant and Animal Habitat:

- This is a new section which replaces two sections in prior plan (Special Natural Areas and Fisheries and Wildlife Resources)
- Shifts focus from individual species to more holistic view of natural communities and the habitat they provide for plants and animals
- Identifies characteristics which contribute to regional significance of habitat in the jurisdiction
- Recommends exploring landscape level habitat planning using a process such as Beginning with Habitat
- Emphasizes importance of strengthening policies to direct development to limit sprawl and associated impacts on habitat

#### Section 5.9 Recreational Resources

- Updated figures
- Increased emphasis on recreational resources as one of the principal values identified by the Commission
- Increased emphasis on the fact that recreational resources provide economic value to the State, jurisdiction, and neighboring municipalities
- Continued emphasis on protecting and promoting primitive recreational resource values

#### Section 5.10 Scenic Resources:

- This is a new section of the plan though scenic resources goals and policies existed in the 1997
- Describes in general terms the incredible scenic resources of the jurisdiction
- Directs the Commission to develop scenic evaluation criteria to be applied when reviewing development proposals

#### Section 5.11 Water Resources:

- Updated data and information
- Incorporated the Commission's Lake Management program (originally adopted as an amendment to the plan in 1990 and included as an Appendix in the 1997 plan) into the section
- Identified need to review lake management program which has been in place for 15 years
- Included results of 2006 study documenting the regional significance of Maine's brook trout resources, an indicator of excellent water quality
- Updated information and issues associated with growth in consumptive water use

## Section 5.12 Wetland Resources

- Updated data and information
- Acknowledged value of vernal pools and the need to develop appropriate protection consistent with DEP rules

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### **In Conclusion:**

At the Commission Meeting on October 10th, the staff presentation will outline the major points and significant changes between the draft 2008 language and the 1997 language for each chapter of the CLUP. Additionally, we will highlight the changes made as the result of Commissioners' comments received earlier. We will likely cover Chapter 4 Development in slightly more detail than the other sections due to the fact that only four of the seven Commissioners were present when this section was first presented at the August 30<sup>th</sup>, 2007 Commission meeting.

If the Commission is reasonably comfortable with this complete preliminary draft, we will move forward with the public workshop phase of this project. The table included earlier in this memo, proposes general times and locations for these workshops. We hope that a diversity of groups will participate and that a range of opinions will be expressed during the 'public workshop' phase. Draft language will likely change as a result of comments received both during workshops and stakeholder meetings.

P.S. Due to the volume of this document and for purposes of readability, we have not included a red-lined version of the document.

/FWT

Enclosures:      Section 5.5 Energy Resources – Questions for Commission consideration  
                         2008 Comprehensive Land Use Plan – Preliminary Draft – Version 10/10/2007

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